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MONSTER ENERGY COMPANY,
8 a Delaware corporation

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 MONSTER ENERGY COMPANY, a
Delaware corporation,

14 Plaintiff,

15 vs.

16 VITAL PHARMACEUTICALS, INC.
17 c/b/a VPX Sports, a Florida corporation,
and JOHN H. OWOC a.k.a. JACK
18 OWOC, an individual,

19 Defendants.
20

Case No. 5:18-cv-1882-JGB-SHK

Hon. Jesus G. Bernal

**DECLARATION OF STEVEN N.
FELDMAN IN SUPPORT OF
PLAINTIFF MONSTER ENERGY
COMPANY'S MOTION FOR A
PRELIMINARY INJUNCTION**

Judge: Hon. Jesus G. Bernal
Date: May 13, 2019
Time: 9:00 a.m.

DECLARATION OF STEVEN N. FELDMAN

I, Steven N. Feldman, declare as follows:

1. I am an attorney at the law firm of Hueston Hennigan LLP, counsel of record for Monster Energy Company (“Monster”) in the above-captioned litigation. I am a member in good standing of the State Bars of California and New York, and have been admitted to practice before this Court. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On April 3, 2019, I telephonically met and conferred with counsel for Defendants Vital Pharmaceuticals, Inc. and John H. Owoc regarding Monster’s Motion for a Preliminary Injunction (“Motion”). The next day, Defendants’ counsel informed me that they would oppose Monster’s Motion.

3. Because this case will inevitably involve the production of documents containing both parties’ proprietary and confidential information, I sent Defendants’ counsel a proposed protective order on April 8, 2019. The proposed protective order allows both parties to designate documents as “Highly Confidential” and limit their disclosure to outside attorneys only (*i.e.*, Outside Attorneys’ Eyes Only).

4. On April 9, 2019, I telephonically met and conferred with Defendants’ counsel regarding: (1) the proposed stipulated protective order; and (2) Monster’s Application for Leave to File Under Seal Portions of Its Exhibits in Support of Its Motion for a Preliminary Injunction and for the Documents to Be Maintained Outside Attorneys’ Eyes Only (Monster’s “Application to Seal”).

5. On April 10, 2019, Defendants’ counsel informed me that Defendants would not agree to the Outside Attorneys’ Eyes Only provision in the proposed protective order. Defendants’ counsel also informed me that Defendants oppose Monster’s Application to Seal.

6. In response, I asked if Defendants would stipulate to treat the materials that Monster seeks to seal as Outside Attorneys’ Eyes Only pending the Court’s

1 ruling on Monster's Application to Seal. Defendants' counsel informed me that he
2 could not agree at that time. I asked him to check once again with his clients, and to
3 get back to us that evening before we filed our motion. He said he would, yet never
4 got back to us, and when I tried to follow up via e-mails and a phone call, I received
5 no response.

6 7. Attached hereto as Exhibit 1 is a true and correct excerpt of an
7 Instagram post made by John H. Owoc on April 3, 2019, available at
8 <https://www.instagram.com/p/BvxdczLHMRA/h>. Mr. Owoc's Instagram username
9 is "bangenergy.ceo."

10 8. Lodged with the Court as Exhibit 2 is a true and correct excerpt of a
11 YouTube video titled "How Does Creatine Work? – Supplement Showdown,"
12 published on June 28th, 2017 and available at
13 https://www.youtube.com/watch?v=_hYcTX9jYr0&feature=youtu.be.

14 9. Lodged with the Court as Exhibit 3 is a true and correct excerpt of a
15 YouTube video titled "How Does Creatine Work? – Supplement Showdown",
16 published on June 28th, 2017 and available at
17 https://www.youtube.com/watch?v=_hYcTX9jYr0&feature=youtu.be.

18 10. Attached hereto as Exhibit 4 is a true and correct copy of a page on the
19 bang-energy.com website titled, "Bang's Jack Owoc Blasts Monster Energy Into
20 Submission! CA-Based Monster Energy File [*sic*] Third Frivolous Lawsuit Against
21 VPX," available at [https://bang-energy.com/articles/ca-based-monster-energy-file-](https://bang-energy.com/articles/ca-based-monster-energy-file-third-frivolous-lawsuit-against-vpx/)
22 [third-frivolous-lawsuit-against-vpx/](https://bang-energy.com/articles/ca-based-monster-energy-file-third-frivolous-lawsuit-against-vpx/).

23 11. Attached hereto as Exhibit 5 is a true and correct copy of a page on the
24 website bestpricenutrition.com titled, "New Monster Energy Drink Reign vs. Bang
25 Energy," available at [https://www.bestpricenutrition.com/blogs/general/new-](https://www.bestpricenutrition.com/blogs/general/new-monster-energy-drink-reign-vs-bang-energy)
26 [monster-energy-drink-reign-vs-bang-energy](https://www.bestpricenutrition.com/blogs/general/new-monster-energy-drink-reign-vs-bang-energy).

12. Attached hereto as Exhibit 6 is a true and correct copy of an excerpt of an Instagram post made by John H. Owoc on February 29, 2016, available at <https://www.instagram.com/p/BCYvw0VxAw6/>.

13. Attached hereto as Exhibit 7 is a true and correct copy of the “About Us” page on the bang-energy.com website, available at <https://bang-energy.com/about-us/>.

14. Attached hereto as Exhibit 8 is a true and correct copy of a Warning Letter from the Department of Health and Human Services to Jack Owoc dated April 24, 2015.

15. Attached hereto as Exhibit 9 is a true and correct copy of a post on blog.europasports.com titled, “Beef Up Your Muscles and Your Brain with Super Creatine,” available at https://blog.europasports.com/vpx_createine/.

16. Attached hereto as Exhibit 10 is a true and correct copy of photos of a can of BANG energy drink in the Peach Mango flavor.

17. Attached hereto as Exhibit 11 is a true and correct copy of a page on the cactusshadowscspressonline.com website titled “Energy drink first to add creatine,” which was posted by Lauryn Stornelli on November 29, 2018, available at <https://cactusshadowscspress.com/health/2018/11/29/energy-drink-first-to-add-creatine/>.

18. Attached hereto as Exhibit 12 is a true and correct copy of an excerpt of an Instagram post made by John H. Owoc on September 12, 2013, available at <https://www.instagram.com/p/eLvHGKRA2P/>.

19. Attached hereto as Exhibit 13 is a true and correct copy of an excerpt of an Instagram post made by John H. Owoc on May 9, 2015, available at <https://www.instagram.com/p/2eHM5IxAXe/>.

20. Attached hereto as Exhibit 14 is a true and correct copy of an excerpt of an Instagram post made by John H. Owoc on March 16, 2014, available at <https://www.instagram.com/p/loKjyTRAyQ/>.

1 21. Attached hereto as Exhibit 15 is a true and correct copy of an excerpt of
2 an Instagram post made by John H. Owoc on July 28, 2015, available at
3 <https://www.instagram.com/p/5sA1U2xA5F/>.

4 22. Attached hereto as Exhibit 16 is a true and correct copy of U.S. Patent
5 No. 8,445,466 B2, dated May 21, 2013.

6 23. Attached hereto as Exhibit 17 is a true and correct copy of the
7 “Frequently Asked Questions” page on the bang-energy.com website, available at
8 <https://bang-energy.com/faqs/>.

9 24. Attached hereto as Exhibit 18 is a true and correct copy of a page on the
10 [beveragedaily.com](https://www.beveragedaily.com/Article/2014/09/11/Ripped-like-Rambo-smart-like-Picasso!-VPX-rips-up-sports-drink-rulebook) website titled, “Get ripped like Rambo and smart like Picasso!
11 VPX rips up sports drink rulebook” authored by Ben Bouckley on September 24,
12 2014 and available at [https://www.beveragedaily.com/Article/2014/09/11/Ripped-](https://www.beveragedaily.com/Article/2014/09/11/Ripped-like-Rambo-smart-like-Picasso!-VPX-rips-up-sports-drink-rules)
13 [like-Rambo-smart-like-Picasso!-VPX-rips-up-sports-drink-rules](https://www.beveragedaily.com/Article/2014/09/11/Ripped-like-Rambo-smart-like-Picasso!-VPX-rips-up-sports-drink-rules).

14 25. Attached hereto as Exhibit 19 is a true and correct copy of an excerpt of
15 an Instagram post made by John H. Owoc on March 15, 2019, available at
16 <https://www.instagram.com/p/BvCqH0BnfAQ/>.

17 26. Attached hereto as Exhibit 20 is a true and correct copy of two
18 photographs depicting various cans of BANG energy drink.

19 27. Attached hereto as Exhibit 21 is a true and correct copy of a post on
20 prnewswire.com titled “Jack Owoc’s Bang Energy Hits #1!,” made on September 16,
21 2018 and available at [https://www.prnewswire.com/news-releases/jack-owocs-bang-](https://www.prnewswire.com/news-releases/jack-owocs-bang-energy-hits-1-300719504.html?mod=article_inline)
22 [energy-hits-1-300719504.html?mod=article_inline](https://www.prnewswire.com/news-releases/jack-owocs-bang-energy-hits-1-300719504.html?mod=article_inline).

23 28. Attached hereto as Exhibit 22 is a true and correct copy of an excerpt of
24 an Instagram post made by John. H. Owoc on November 15, 2017, available at
25 <https://www.instagram.com/p/BbiUHBahijN/>.

26 29. Attached hereto as Exhibit 23 is a true and correct copy of a Scientific
27 Opinion titled, “Scientific Opinion on the substantiation of health claims related to
28 creatine and increase in physical performance during short-term, high intensity,

1 repeated exercise bouts (ID 739, 1520, 1521, 1522, 1523, 1525, 1526, 1531, 1532,
2 1533, 1534, 1922, 1923, 1924), increase in endurance capacity (ID 1527, 1535), and
3 increase in endurance performance (ID 1521, 1963) pursuant to Article 13(1) of
4 Regulation (EC) No 1924/2006” from the European Food and Safety Authority
5 (“EFSA”) published in the EFSA Journal in 2011.

6 30. Attached hereto as Exhibit 24 is a true and correct copy of a Journal
7 Article titled, “International Society of Sports Nutrition position stand: creatine
8 supplementation and exercise” from the Journal of the International Society of Sports
9 Nutrition, published on August 30, 2007 and available at
10 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2048496/>.

11 31. Attached hereto as Exhibit 25 is a true and correct copy of a Journal
12 Article titled “Creatine supplementation with specific view to exercise/sports
13 performance: an update” from the Journal of the International Society of Sports
14 Nutrition, published on July 20, 2012 and available at
15 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407788/>.

16 32. Attached hereto as Exhibit 26 is a true and correct copy of the U.S.
17 Patent and Trademark Office’s March 5, 2019 Decision on Appeal on Patent No.
18 8,445,466 B2, affirming the Examiner’s rejections of claims 1 and 5–12.

19 33. Attached hereto as Exhibit 27 is a true and correct copy of an excerpt of
20 an Instagram post made by John. H. Owoc on November 15, 2017, available at
21 <https://www.instagram.com/p/BbiUHBAhijN/>.

22 34. Attached hereto as Exhibit 30 is a true and correct copy of a post on
23 prnewswire.com titled “Monstrous Victory for Bang Energy,” published December
24 11, 2018 and available at [https://www.prnewswire.com/news-releases/monstrous-](https://www.prnewswire.com/news-releases/monstrous-victory-for-bang-energy-300763038.html?mod=article_inline)
25 [victory-for-bang-energy-300763038.html?mod=article_inline](https://www.prnewswire.com/news-releases/monstrous-victory-for-bang-energy-300763038.html?mod=article_inline).

26 35. Attached hereto as Exhibit 31 are true and correct copies of a collection
27 of tweets from Twitter users collected from Twitter (<https://twitter.com/>) on April 9,
28 2019.

1 36. Attached hereto as Exhibit 32 are true and correct copies of a collection
2 of reviews of BANG products collected from Amazon (<https://www.amazon.com/>)
3 on April 9, 2019.

4 37. Attached hereto as Exhibit 33 are true and correct copies of a collection
5 of reviews of BANG products taken from the Google shopping page
6 (<https://www.google.com/shopping?hl=en>) on April 9, 2019.

7 38. Attached hereto as Exhibit 34 are true and correct copies of a collection
8 of comments by Facebook users collected from Facebook
9 (<https://www.facebook.com/>) on April 9, 2019.

10 39. Attached hereto as Exhibit 35 is a true and correct copy of the 2019
11 Monster Energy Key Funding Agreement between Monster and American Gas and
12 Oil, executed on January 22, 2019.

13 40. Attached hereto as Exhibit 36 is a true and correct copy of the Packaged
14 Beverage Incentive Agreement between BP West Coast Products LLC and Monster,
15 executed on March 25, 2019.

16 41. Attached hereto as Exhibit 37 is a true and correct copy of an excerpt of
17 an Instagram post made by John. H. Owoc on December 13, 2016, available at
18 <https://www.instagram.com/p/BN-5a5NhclZ/>.

19 42. Attached hereto as Exhibit 38 is a true and correct copy of an excerpt of
20 an Instagram post made by John. C. Owoc on August 9, 2018, available at
21 <https://www.instagram.com/p/BmRWUHLISaj/>.

22 43. Attached hereto as Exhibit 39 is a true and correct copy of Jack Owoc's
23 LinkedIn profile as of April 9, 2019, available at
24 <https://www.linkedin.com/in/jackowoc/>.

25 44. Attached hereto as Exhibit 40 is a true and correct copy of a post on the
26 therealdeal.com website titled, "Vital Pharmaceuticals pays \$35M for Pembroke
27 Pines warehouse" made by Keith Larsen on February 20, 2019, available at
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1 [https://therealdeal.com/miami/2019/02/20/vital-pharmaceuticals-pays-35m-for-](https://therealdeal.com/miami/2019/02/20/vital-pharmaceuticals-pays-35m-for-pembroke-pines-warehouse/)
2 [pembroke-pines-warehouse/](https://therealdeal.com/miami/2019/02/20/vital-pharmaceuticals-pays-35m-for-pembroke-pines-warehouse/).

3 45. Attached hereto as Exhibit 41 is a true and correct copy of a page on the
4 The Vitamin Shoppe website selling VPX products as of April 9, 2019, available at
5 <https://www.vitaminshoppe.com/b/vpx-vital-pharmaceuticals/N-9cv>.

6 46. Attached hereto as Exhibit 42 is a true and correct copy of a page on the
7 Amazon.com website selling VPX products as of April 9, 2019, available at
8 [https://www.amazon.com/stores/node/2603413011?_encoding=UTF8&field-](https://www.amazon.com/stores/node/2603413011?_encoding=UTF8&field-lbr_brands_browse-bin=VPX&ref_=bl_dp_s_web_2603413011)
9 [lbr_brands_browse-bin=VPX&ref_=bl_dp_s_web_2603413011](https://www.amazon.com/stores/node/2603413011?_encoding=UTF8&field-lbr_brands_browse-bin=VPX&ref_=bl_dp_s_web_2603413011).

10 47. Attached hereto as Exhibit 43 is a true and correct copy of an excerpt of
11 an Instagram post made by John. H. Owoc on March 5, 2019, available at
12 <https://www.instagram.com/p/BupPT4KHonI/>.

13 48. Lodged with the Court as Exhibit 44 is a true and correct copy of an
14 Instagram video posted by John. H. Owoc on March 5, 2019, available at
15 <https://www.instagram.com/p/BupPT4KHonI/>.

16 49. Attached hereto as Exhibit 47 is a true and correct copy of the U.S.
17 National Supplier and Purchase Agreement between Circle K Procurement and
18 Brands Limited and Monster, effective on January 1, 2019.

19 50. Attached hereto as Exhibit 48 is a true and correct copy of the U.S.
20 National Supplier and Purchase Agreement between Circle K Procurement and
21 Brands Limited and Monster, effective on January 1, 2018.

22 51. Attached hereto as Exhibit 49 is a true and correct copy of Monster's
23 ongoing agreements with Walmart regarding shared coolers, and relevant operative
24 planograms subject to that agreement.

25 52. Attached hereto as Exhibit 50 is a true and correct copy of the 2019
26 Monster Energy Key Account Funding Agreement between Dunne Manning and
27 Monster, executed on February 21, 2019.

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53. Attached hereto as Exhibit 51 is a true and correct copy of the 2019 Monster Energy Key Account Funding Agreement between Duchess and Monster Energy Company, executed on February 11, 2019.

54. Attached hereto as Exhibit 52 is a true and correct copy of the 2018 Monster Energy Key Account Funding Agreement between Duchess and Monster Energy Company, executed on March 19, 2018.

55. Attached hereto as Exhibit 53 is a true and correct copy of the 2019 Monster Energy Key Account Funding Agreement between Big Red Valero and Monster Energy Company, executed on January 14, 2019.

56. Attached hereto as Exhibit 54 is a true and correct copy of the 2018 Monster Energy Key Account Funding Agreement between Big Red Valero and Monster Energy Company, executed on January 8, 2018.

57. Attached hereto as Exhibit 55 is a true and correct copy of the 2019 Monster Energy Key Account Funding Agreement between Pit Stop – NY (Marshalls) and Monster Energy Company, executed on January 16, 2019.

58. Lodged with the Court as Exhibit 56 are two cans of BANG energy drinks (Root Beer Blaze and Lemon Drop flavors) purchased on April 9, 2019 at approximately 10 a.m. from GNC, located at 510 W. 6th St., Los Angeles, CA 90014.

59. Attached hereto as Exhibit 57 is a true and correct copy of VPX's Motion to Dismiss and to Strike Class Action Complaint in United States District Court, Southern District of Florida case of *Shirley St. Fort-Nwabuku v. Vital Pharmaceuticals, Inc.* (Case No. 0:18-cv-62823) filed on February 19, 2019.

60. Attached hereto as Exhibit 58 is a true and correct copy of an Instagram comment made by John H. Owoc on April 9, 2019, available at <https://www.instagram.com/p/BwDXre3HpiA/>.

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